IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 26TH OCTOBER 2007 / 4TH KARTHIKA 1929

Bail Appl..No. 6398 of 2007()

CRIME NO. 342/07 OF BALARAMAPURAM POLICE STATION

PETITIONERS : ACCUSED:

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1. SURESH, S/O.PONNAYYAN,
   ALUVILAPUTHEN VEEDU, THALAYIL,
   BALARAMAPURAM, THIRUVANANTHAPURAM.

2. RAJESH, S/O.MANIYAN,
   KARIBILAVILA PUTHENVEEDU,
   BALARAMAPURAM P.O.

3. BIJU, S/O.MUTHUSWAMI,
   ALUVILAPUTHEN VEEDU, THALAYIL,
   BALARAMAPURAM, THIRUVANANTHAPURAM.

4. NAGARAJAN, S/O.SANKAR,
   KARILBILAVILA PUTHENVEEDU,
   BALARAMAPURAM P.O.

5. GOPI, S/O.KUNJAN NADAR,
   ALUVILAPUTHEN VEEDU, THALAYIL,
   BALARAMAPURAM, THIRUVANANTHAPURAM.

6. CHELLAN.T.SELVARIROOR,
   S/O.IMBARAJAN, KARIBILAVILA PUTHENVEEDU,
   BALARAMAPURAM P.O.

BY ADV. SRI.B.S.SWATHY KUMAR

RESPONDENTS: STATE:

STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 26/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 6398 of 2007

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Dated this the 26th day of October, 2007

O R D E R

Application for anticipatory bail. The petitioners face allegations for offences punishable, inter alia, under Sections 447 and 324 r/w. 149 I.P.C. and Section 27 of the Arms Act. The crux of the allegations against the petitioners is that on account of prior animosity, they were members of an unlawful assembly of persons. One of them was armed with dangerous weapons. They trespassed into the property of the defacto complainant and unleashed an attack on the victim, who suffered injury with such dangerous weapons. The alleged incident occurred on 6.9.2007. The crime was registered on 9.9.2007. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. It is prayed that anticipatory bail may be granted to them.

3. The learned Prosecutor opposes the application. The case diary has been perused by me. I shall not embark on a discussion

on merits about the acceptability of the allegation raised or the credibility of the data collected. Suffice it to say that after hearing the arguments and perusing the case diary, I am unable to find any features in this case which would justify or warrant the invocation of the extra ordinarily equitable jurisdiction under Section 438 Cr.P.C.

4. The learned counsel for the petitioners finally and in conclusion makes a request to give the petitioners an opportunity to surrender before the learned Magistrate and prevent arrest before they surrender before the learned Magistrate. The learned counsel submits that the petitioners apprehend physical harm at the hands of the police in as much as the rivals of the petitioners are very influential and belonged to the ruling political group. Though I do not find any materials to support this apprehension of harm at the hands of the police, I am satisfied that appropriate direction can be given to allay the apprehension of the petitioners.

5. In the result:

(1) This application is allowed in part.

(2) The following directions are issued under Section 438 Cr.P.C.

(a) The petitioners shall surrender before the learned Magistrate on or before 2.11.2007 at 11 a.m. They may file applications for bail after

giving sufficient prior notice to the learned Prosecutor in charge of the case. The police shall also be entitled to file application for custody, if necessary, from the learned Magistrate. The learned Magistrate shall pass appropriate orders on merits on such applications filed by both side. The petitioners shall thereafter abide by the orders to be passed by the learned Magistrate.

(b) If the petitioners do not appear before the learned Magistrate as directed in clause (1) above, these directions shall lapse on 2.11.07 and the police shall be at liberty thereafter to arrest the petitioners and deal with them in accordance with law.

(c) If the petitioners were arrested prior to their surrender on 2.11.2007 as directed in clause (1) above, they shall be released on bail on their executing bonds for Rs. 25,000/- without any surety undertaking to appear before the learned Magistrate on 2.11.2007.

(R. BASANT)
Judge

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